

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Odom Bryant,)	Case No. 5:23-cv-05088-JDA
)	
Petitioner,)	
)	
v.)	<u>OPINION AND ORDER</u>
)	
Warden of Tallahatchie County)	
Correctional Facility,)	
)	
Respondent.)	
)	
)	

This matter is before the Court on a motion for summary judgment filed by Respondent. [Doc. 32.] In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial proceedings.

On July 30, 2024, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending that Respondent’s motion for summary judgment be granted. [Doc. 44.] The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences if they failed to do so. [*Id.* at 28.] Petitioner’s objections were entered on the docket on August 15, 2024, and Respondent filed a reply on August 29, 2024. [Docs. 46; 51.]

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976).

The Court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to, and the Court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” (internal quotation marks omitted)). Although “objections need not be novel to be sufficiently specific,” *Elijah v. Dunbar*, 66 F.4th 454, 460 (4th Cir. 2023), “a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection,” *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017) (internal quotation marks omitted); see *Regassa v. Warden of FCI Williamsburg*, No. 8:22-cv-466-SAL, 2023 WL 2386515, at *2 (D.S.C. Mar. 7, 2023) (concluding an objection was non-specific because the petitioner “ignore[d] the magistrate judge’s analysis and repeat[ed] the arguments he made in his opposition brief”); *Velez v. Williams*, No. 9:19-cv-03022-JMC, 2021 WL 837481, at *5 (D.S.C. Mar. 5, 2021) (reviewing for clear error only when the petitioner’s objections were “rehashed, general, and non-specific”), *appeal dismissed*, 2021 WL 5879177 (4th Cir. Dec. 13, 2021). “Even so, when confronted with the objection of a pro se litigant, [courts] must also be mindful of [their] responsibility to construe pro se filings liberally.” *Martin*, 858 F.3d at 245.

DISCUSSION

The Court concludes that Petitioner’s objections, liberally construed, fail to address the Report’s findings and recommendations. Other than re-stating his factual allegations

and the arguments he made before the Magistrate Judge, Petitioner has failed to address any of the substantive findings and recommendations in the Report.¹ Nevertheless, out of an abundance of caution for a pro se party, the Court has conducted a de novo review of the Report, the record, and the applicable law. Upon such review, the Court accepts the Report and Recommendation of the Magistrate Judge and incorporates it by reference. Accordingly, Respondent's motion for summary judgment [Doc. 32] is GRANTED and this case is DISMISSED with prejudice.

CERTIFICATE OF APPEALABILITY

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A petitioner satisfies the standard by demonstrating that reasonable jurists would find this Court's assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. See *Miller-El v. Cockrell*, 537 U.S. 322 (2003); *Slack v. McDaniel*, 529 U.S. 473 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001).

¹ Petitioner appears to object to the Report's finding that Grounds One through Five, Nine, and Ten are procedurally barred because they were not ruled upon by the South Carolina PCR court. [See Doc. 46 at 6 ("As well as the issues that [were] presented that are procedurally barred. Because petitioner is not a lawyer and shouldn't be held accountable for not raising the issues at the proper time or properly litigating the case or claims properly [] should be considered a procedural bypass.").] Because this argument does not address the substantive findings of the Report, the Court overrules this objection.

In this case, the Court agrees with the Magistrate Judge that the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is denied.

IT IS SO ORDERED.

s/ Jacquelyn D. Austin
United States District Judge,

September 11, 2024
Columbia, South Carolina